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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,385	03/29/2004	Ulrich Deiss	ZTP01P13013	7626
24131	7590	01/21/2005	EXAMINER	
LERNER AND GREENBERG, PA P O BOX 2480 HOLLYWOOD, FL 33022-2480			PERRIN, JOSEPH L	
			ART UNIT	PAPER NUMBER
			1746	
DATE MAILED: 01/21/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/813,385	Applicant(s) DEISS ET AL.	
	Examiner Joseph L. Perrin, Ph.D.	Art Unit 1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20040329</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "frost protection device" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
2. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Art Unit: 1746

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Reference numerals "6" and "8". Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 2-3 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Art Unit: 1746

6. Re claim 2, the disclosed frost protection "device" does not adequately enable Applicant's invention since such vague terms would read on any temperature controlling structure capable of preventing frost from forming on the disclosed heating body. The original disclosure, particularly the drawings, do not adequately describe what the "device" is or any structural relationship with the claimed dishwasher. Can the heat exchanger be construed as such a device? Or is applicant claiming another "device" for this use such as the disclosed circulating pump which circulates heated fluid through the heating body? Given the broadest reasonable interpretation of a means for protecting against frost, the limitations of claims 2-3 are construed as any structure capable of controlling temperature of the claimed tubular heating body and the claims will be examined accordingly. However, clarification and correction are still required.

7. Re claim 3, applicant's means-plus-function language lacks enablement since applicant's original disclosure, particularly the drawings, do not adequately describe the claimed "device" cited above, or other structures, materials, or acts to perform the disclosed function. Applicant is directed to MPEP §2181(IV) for determining whether 35 U.S.C. 112, first paragraph support exists:

37 CFR 1.75(d)(1) provides, in part, that "the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description." In the situation in which the written description only implicitly or inherently sets forth the structure, materials, or acts corresponding to a means- (or step-) plus-function, and the examiner concludes that one skilled in the art would recognize what structure, materials, or acts perform the function recited in a means- (or step-) plus-function, the examiner should either: (A) have the applicant clarify the record by amending

the written description such that it expressly recites what structure, materials, or acts perform the function recited in the claim element; or (B) state on the record what structure, materials, or acts perform the function recited in the means- (or step-) plus-function limitation. Even if the disclosure implicitly sets forth the structure, materials, or acts corresponding to a means- (or step-) plus-function claim element in compliance with 35 U.S.C. 112, first and second paragraphs, the USPTO may still require the applicant to amend the specification pursuant to 37 CFR 1.75(d) and MPEP 608.01(o) to explicitly state, with reference to the terms and phrases of the claim element, what structure, materials, or acts perform the function recited in the claim element. See 35 U.S.C. 112, sixth paragraph ("An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof." (emphasis added)); see also *B. Braun Medical*, 124 F.3d at 1424, 43 USPQ2d at 1900 (holding that "pursuant to this provision [35 U.S.C. 112, sixth paragraph], structure disclosed in the specification is corresponding' structure only if the specification or prosecution history clearly links or associates that structure to the function recited in the claim. This duty to link or associate structure to function is the quid pro quo for the convenience of employing 112, paragraph 6.")

In the instant case, since applicant's disclosure only implicitly discloses structure for protecting against frost (*i.e.* the broadly described "device" without structural relationship to the dishwasher), applicant is urged to either: (A) clarify the record by amending the written description such that it expressly recites what structure, materials, or acts perform the function recited in the claim element (being careful not to add new matter); or (B) state on the record what structure, materials, or acts perform the function recited in the means- (or step-) plus-function limitation.

Art Unit: 1746

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: The “closed tubular heating body filled with a fluid” and the “gas burner” lack a structural cooperative relationship amounting to a gap since the tubular body would not be a “heating body” unless it was in heat-conducting contact with a heat source, the heat source of the instant invention being a “gas burner”. It is noted that applicant’s limitations of the gas burner “heating said heating body during the drying section” & “heating the rinsing liquid...” are intended use and not afforded significant patentable weight for the claimed apparatus. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). “[A]pparatus claims cover what a device is, not what a device does.” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original)
10. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In independent claims 1 & 20, applicant’s limitation of “a housing defining a motor area” renders the claim indefinite since it is unclear whether or not applicant is positively claiming a

Art Unit: 1746

motor. Since a housing inherently defines an area, and since a motor does not appear to be positively claimed, the claimed "motor area" is construed as intended use and not given significant patentable weight. In claim 14 (and claims 15-19 dependent thereon), it is unclear what is meant by "connected to at least said pumps". Applicant has failed to define the meets and bound of the claimed patent protection sought. Since the plural "pumps" reads on at least two pumps (*i.e.* two or more), the recitation of "connected at least to said [at least two pumps]" is confusing since it is unclear of how many connections are being claimed. Clarification and correction are required.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,642,742 to Noren *et al.* (hereinafter "Noren"). Noren discloses a dishwasher 10 with a housing, a closed tubular heating body (supply line 26 which forms a closed fluid loop and circulates heated washing fluid), a gas burner 40, a "frost-protection device" (pump 22 which circulates heated washing fluid in a closed circulation loop), the heating body (line 26) disposed in a side wall (see Figure 2), the heating body having a "meandering" shape (see 90° curvature of

Art Unit: 1746

line 26 in Figure 2), the dishwasher further having a heat exchanger 50 and supply lines 16/18, the heating body and supply line integrally formed to receive fluid from the heat exchanger (see Figures 1-2 and col. 2, line 66 – col. 3, line 58).

Allowable Subject Matter

13. Claim 20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

14. The following is a statement of reasons for the indication of allowable subject matter:

15. The closest prior art of record, U.S. Patent No. 5,794,634 to Noren *et al.*, fails to teach or reasonably suggest each and every limitation of the instant invention. Specifically, the Noren reference fails to teach or suggest the claimed dishwasher having a gas burner in heat-conducting contact with a closed fluid filled tubular heating body programmed for using the gas burner to heat the heating body in a drying mode and heat rinsing liquid in a rinsing mode, which is disclosed as an essential element of claimed invention.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent No. 6,109,339 to Talbert *et al.*, which discloses a closed loop heat exchanger heating system; U.S. Patent No. 5,511,570 to Noren *et al.*, which is related to and substantially cumulative to

Art Unit: 1746

Noren cited above; U.S. Patent No. 4,748,968 to Vrij, which discloses a gas heated supply system connectable to a dishwasher.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 7:00-4:30, except alternate Fridays.

18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Joseph L. Perrin, Ph.D.
Examiner
Art Unit 1746



jlP